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Subject: Plaintiffs File Three Class Action Complaints Against VW (Update)

FYI, this is the updated and more detailed version of the BNA article that I circulated last night...

Air Pollution

Plaintiffs File Three Class Action Complaints Against VW



BNA Snapshot

Volkswagen Emissions Scandal

Key Development: Plaintiffs attorneys file three separate consolidated class action complaints against Volkswagen on behalf of

- consumers who purchased or leased affected Volkswagen, Audi and Porsche vehicles based on fraudulent marketing;
- resellers who saw the value of their inventory of Volkswagen diesel vehicles drop in the wake of the emissions scandal; and
- competitor car dealers, who lost sales due to Volkswagen's false marketing of its “Clean Diesel” fleet.

What's Next: A Feb. 25 status conference will be held in California to discuss a proposed discovery plan, German privacy laws and VW's internal investigation into the emissions scandal.

By Patrick Ambrosio

Feb. 23 — Attorneys representing plaintiffs who are suing Volkswagen AG over the company's use of illegal technology in its diesel vehicle fleet filed three class action lawsuits against the automaker (*In re Volkswagen "Clean Diesel" Mktg., Sales Practices and Prod. Liab.*, N.D. Cal., No. 3:15-md-2672, 2/22/16).

The complaints, filed Feb. 22 in the U.S. District Court for the Northern District of California, consolidate hundreds of lawsuits filed against Volkswagen after it was revealed that the automaker used illegal defeat devices that allowed its diesel engine vehicles to pass emissions tests despite emitting more pollution than allowed under federal standards.

The plaintiffs allege Volkswagen violated federal and state laws by using that illegal technology and lying to regulators and the public about emissions from its turbocharged direct injection (TDI) “Clean Diesel” engines.

The plaintiffs said they are seeking monetary damages, including punitive damages, from the automaker, as well as a vehicle buy-back program, pollution mitigation measures, business overhauls and other appropriate relief.

In addition to the class action lawsuits, Volkswagen also faces a multibillion dollar civil lawsuit filed by the U.S. Justice Department, possible criminal charges and fines in other markets where the diesel cars were sold (04 DEN A-2, 1/7/16).

VW 'Cheated Its Way to the Top.'

"This case arises out of one of the most brazen corporate crimes in history, a cautionary tale about winning at any cost," the plaintiffs said. "Volkswagen cheated its way to the top of the automotive food chain and spared no victim along the way, targeting its customers, U.S. and foreign regulators, and even the very air we breathe." The three complaints, filed by lead plaintiffs attorney Elizabeth Cabraser, were filed on behalf of:

- consumers who purchased and leased affected Volkswagen vehicles;
- vehicle resellers; and
- automobile dealers that compete with Volkswagen.

The consumer complaint proposed to establish a nationwide class of consumers who owned or leased the about 580,000 diesel vehicles that were outfitted with defeat devices, including various model years of the Volkswagen Passat, Golf and Beetle, as well as models marketed under the Audi and Porsche brand names. In addition, the consumer class action complaint proposes to establish 51 additional classes, which would include consumers in each state and the District of Columbia.

Attorneys for the plaintiffs didn't respond to requests for comment on the filing of the complaints. Volkswagen of America didn't respond to requests for comment on the filings, but the automaker has generally declined to comment on ongoing litigation related to the diesel emissions issue.

Resellers, Competitors Seek Damages

The vehicle reseller complaint proposed to establish a class encompassing all automobile dealers in the U.S. who had one or more of the affected two-liter diesel vehicles in their inventory as of Sept. 18, the date the Environmental Protection Agency and the California Air Resources Board announced allegations that Volkswagen used illegal technology in those vehicles.

The reseller class also would include resellers who have previously owned three-liter diesels in their inventory as of Nov. 2, the day regulators announced that the Volkswagen diesel emissions issues were more widespread than initially thought (212 DEN A-2, 11/3/15).

The reseller plaintiffs alleged that Volkswagen's use of illegal defeat devices imposed economic damages tied to a loss of resale value of the affected diesel cars. Even if Volkswagen is able to repair or retrofit the vehicles to meet federal emissions standards, such repairs will continue to erode the value of the vehicles, which may see reduced mileage per gallon, reduced performance and increased operation costs, the reseller plaintiffs said.

Competitor Dealership Complaint

The competitor dealership complaint proposed to establish a class of dealers who were harmed by Volkswagen's false marketing of its Clean Diesel fleet. That includes sellers of the Honda Civic hybrid, the Toyota Prius and the Chevrolet Cruze diesel.

"Each and every one of the class vehicles sold in the United States represents a lost sale of a competing vehicle that could actually deliver the fuel efficiency and clean emissions that defendants falsely promised and that buyers were seeking," the plaintiffs said.

The next step in the class action lawsuits against Volkswagen is a scheduled Feb. 25 status conference to be held before senior District Judge Charles R. Breyer, who is overseeing the Volkswagen litigation.

The agenda for the status conference calls for consideration of a proposed discovery schedule, as well as updates on the settlement process, the effect of German privacy laws on the litigation, an investigation being conducted for Volkswagen by the law firm Jones Day and efforts to coordinate the class action litigation with individual cases brought by states.

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For More Information

The complaint filed on behalf of consumers is available at <http://src.bna.com/cN2>.

The complaint filed on behalf of resellers is available at <http://src.bna.com/cOb>.

The complaint filed on behalf of competitor auto dealers is available at <http://src.bna.com/cOd>.

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